

Fifteenth Amendments of the Constitution of the United States in Jefferson County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the Federal Register on September 23, 1975 (40 FR 43746).

Dated: December 5, 1996.

Janet Reno,

Attorney General of the United States.

[FR Doc. 96-31403 Filed 12-9-96; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

[Docket No. 96-20]

### Jonathan Agbebiyi, M.D.; Revocation of Registration

On September 5, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Jonathan A. Agbebiyi, M.D. (Respondent) of Phoenix, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AA2034306, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that on or about January 26, 1994, the Arizona Board of Medical Examiners revoked the Respondent's state medical license, and consequently, the Respondent was no longer authorized to handle controlled substances in the State of Arizona.

By letter dated February 24, 1996, the Respondent filed a timely request for a hearing, and the matter was docketed before administrative Law Judge Mary Ellen Bittner. On March 5, 1996, Judge Bittner issued an Order for Prehearing Statements. On March 14, 1996, in lieu of filing such a statement, the Government filed a motion for summary disposition, which was accompanied by a copy of the Board of Medical Examiners of the State of Arizona's (Board) Findings of Fact, Conclusions of Law and Order of Revocation dated January 26, 1994. Also attached to the Government's motion was a copy of a letter from a medical investigator for the Board to DEA dated August 31, 1995, stating that Respondent's license to practice medicine in Arizona remained revoked. In addition, Government counsel represented in its motion that on March 14, 1996, he had telephonically contacted the Board and

confirmed that Respondent's license to practice medicine in Arizona had not been restored.

On March 14, 1996, Judge Bittner issued an order providing Respondent up to and including April 5, 1996, to file a response to the Government's motion. However, the Respondent did not file a response, and on April 30, 1996, Judge Bittner issued her Opinion and Recommended Decision. Judge Bittner found that Respondent lacked authorization to handle controlled substances in the State of Arizona; granted the Government's motion for summary disposition; and recommended that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her decision, and on May 30, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge.

The Acting Deputy Administrator finds that on January 26, 1994, the Board of Medical Examiners for the State of Arizona revoked Respondent's license to practice medicine in the State of Arizona. Therefore, Respondent is not currently authorized to handle controlled substances in the State of Arizona. The Drug Enforcement Administration lacks statutory authority to issue or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his practice. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Therial L. Bynum, M.D.*, 61 FR 3948 (1996); *Charles L. Novosad, Jr., M.D.*, 60 FR 47182 (1995); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993).

Judge Bittner also properly granted the Government's motion for summary disposition. Respondent did not file a response to the Government's motion. Respondent presented no evidence to contradict the fact that his license to practice medicine in the State of Arizona has been revoked, and therefore he is unable lawfully to handle controlled substances in that state. It is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub*

*nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984; see also *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Therefore, having considered the facts and circumstances in this matter, the Acting Deputy Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Arizona.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration, AA2034306, previously issued to Jonathan Agbebiyi, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective January 9, 1997.

Dated: December 3, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96-31251 Filed 12-9-96; 8:45 am]

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[Docket No. 94-41]

### Anibal P. Herrera, M.D.; Continuation of Registration with Restriction

On August 31, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anibal P. Herrera, M.D. (Respondent) of Middletown, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AH3517298, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f), for reason that he has been excluded from participation in a program pursuant to 42 U.S.C. 1320a-7(a).

By letter dated September 19, 1994, the Respondent, acting *pro se*, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in New York, New York on April 27, 1995, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses and introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. On July 13, 1995, an attorney entered a notice of appearance